

Audit



Report

OFFICE OF THE INSPECTOR GENERAL

**ARMY CORPS OF ENGINEERS SOLE-SOURCE
SECTION (8a) CONTRACTS FOR DREDGING SERVICES**

Report No. 96-225

September 18, 1996

19991123 046

Department of Defense

DISTRIBUTION STATEMENT A

Approved for Public Release
Distribution Unlimited

DTIC QUALITY INSPECTED 4

AQI 00-02-0489

Additional Copies

To obtain additional copies of this audit report, contact the Secondary Reports Distribution Unit of the Analysis, Planning, and Technical Support Directorate at (703) 604-8937 (DSN 664-8937) or FAX (703) 604-8932.

Suggestions for Future Audits

To suggest ideas for or to request future audits, contact the Planning and Coordination Branch of the Analysis, Planning, and Technical Support Directorate at (703) 604-8939 (DSN 664-8939) or FAX (703) 604-8932. Ideas and requests can also be mailed to:

OAIG-AUD (ATTN: APTS Audit Suggestions)
Inspector General, Department of Defense
400 Army Navy Drive (Room 801)
Arlington, Virginia 22202-2884

Defense Hotline

To report fraud, waste, or abuse, contact the Defense Hotline by calling (800) 424-9098; by sending an electronic message to Hotline@DODIG.OSD.MIL; or by writing the Defense Hotline, The Pentagon, Washington, D.C. 20301-1900. The identity of each writer and caller is fully protected.

Acronyms

FAR	Federal Acquisition Regulation
NAVAIR	Naval Air Systems Command



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884



September 18, 1996

MEMORANDUM FOR AUDITOR GENERAL, DEPARTMENT OF THE ARMY

**SUBJECT: Audit Report on Army Corps of Engineers Sole-Source Section 8(a)
Contracts for Dredging Services (Report No. 96-225)**

We are providing this report for your information and use. We conducted the audit in response to a congressional request. Management comments on a draft of this report were considered in preparing the final report.

Comments on a draft of this report conformed to the requirements of DoD Directive 7650.3 and left no unresolved issues. Therefore, no additional comments are required.

We appreciate the courtesies extended to the audit staff. Questions on the audit should be directed to Mr. Terry L. McKinney, Audit Program Director, at (703) 604-9288 (DSN 664-9288) or Mr. Henry F. Kleinknecht, Audit Project Manager, at (703) 604-9324 (DSN 664-9324). See Appendix F for the report distribution. The audit team members are listed inside the back cover.

Robert J. Lieberman
Assistant Inspector General
for Auditing

Office of the Inspector General, DoD

Report No. 96-225
(Project No. 6CF-5031)

September 18, 1996

Army Corps of Engineers Sole-Source Section 8(a) Contracts for Dredging Services

Executive Summary

Introduction. This audit was performed as a result of a congressional request. Representative Jan Meyers, Chairperson, House Committee on Small Business, received complaints that the sole-source contracts for dredging services that the Norfolk and Buffalo Districts, Army Corps of Engineers, (the Districts) awarded under the Small Business Administration Section 8(a) Program were overpriced. The complaint was also that one of the Section 8(a) contractors was not performing the dredging work with its own assets, but that the contractor was acting as a broker and subcontracting out the work after contract award.

Audit Objectives. The primary audit objective was to determine whether the Army Corps of Engineers awarded contracts for dredging services to Section 8(a) program participants at fair market prices and whether Section 8(a) contractors performed the percentage of the work required by Federal regulations. We also evaluated the management control programs at the principal locations as they related to the audit objectives.

Audit Results. Although the Norfolk and Buffalo Districts satisfied requirements for fair market prices on three sole-source dredging contracts awarded to Section 8(a) contractors, the Districts negotiated the contracts above the Government estimate. However, for FYs 1994 through 1996, the Districts awarded sealed bid competitive contracts that averaged 21.7 and 10 percent below the Government estimate, respectively. As a result, the Districts paid a premium of about 26.7 percent, or \$1.3 million, above the competitive price for negotiated sole-source dredging services contracts awarded to Section 8(a) contractors.

Federal regulations permit the method that the contractor used to fulfill the contract requirements. The contractor did not subcontract out the dredging services, as stated in the complaint. However, because the Norfolk District Section 8(a) contractor neither owned the assets to perform the dredging services nor permanently maintained a staff to perform dredging services, the contractor did lease the dredge and hire dredging personnel to perform the dredging services. The Districts management control programs were adequate in that we identified no material weaknesses in the awarding of dredging contracts.

Recommendation. We recommend that the Commanders of the Norfolk and Buffalo Districts, Army Corps of Engineers, consider the cost benefit of competition when determining the reasonable costs under normal competitive conditions for dredging procurements set-aside for the Section 8(a) program and not award the contracts if the price exceeds the fair market price.

Management Comments. The Corps of Engineers concurred with the recommendation and stated that the Commanders of the Norfolk and Buffalo Districts, Army Corps of Engineers, will consider all options within statutory and regulatory constraints in awarding dredging contracts. See Part I for a summary of management comments and Part III for the complete text of management comments.

Table of Contents

Executive Summary	i
Part I - Audit Results	
Introduction	2
Audit Background	2
Audit Objectives	3
Sole-Source Section 8(a) Dredging Contracts	4
Part II - Additional Information	
Appendix A. Scope and Methodology	
Scope	12
Methodology	12
Management Control Program	13
Appendix B. Summary of Prior Audits and Other Reviews	14
Appendix C. Congressional Audit Request	16
Appendix D. Norfolk and Buffalo Districts FY 1994 Through FY 1996 Competitive Dredging Contracts	17
Appendix E. Organizations Visited or Contacted	20
Appendix F. Report Distribution	21
Part III - Management Comments	
Army Corps of Engineers Comments	24

Part I - Audit Results

Introduction

This report was prepared in response to a congressional request from Representative Jan Meyers, Chairperson, House Committee on Small Business. It discusses the Norfolk and Buffalo Districts, Army Corps of Engineers, (the Districts) award of sole-source dredging contracts under the Small Business Administration Section 8(a) Program. See Appendix C for discussion of the congressional request.

Audit Background

Origin of the Section 8(a) Program. The Section 8(a) Program was designed to afford small businesses that are owned by minorities and other socially and economically disadvantaged individuals an equitable opportunity to compete for contracts that they can perform. The Small Business Act (United States Code, title 15, section 637 [15 U.S.C. 637]) assigned the Small Business Administration responsibility over the administration of the program. The Government establishes contracts with the Small Business Administration, who subcontracts the work to eligible Section 8(a) firms.

Army Corps of Engineers Responsibilities. The Army Corp of Engineers is responsible for dredging soil from certain rivers, lakes, and harbors that commercial and military vessels use for transportation.

Congress passed the Business Opportunity Development Reform Act of 1988, Public Law 100-656. Section 722 of the Act established a program to expand small business participation in dredging. The Small Business Credit and Business Opportunity Enhancement Act, Public Law 102-366, amended Section 722 to extend the program until September 30, 1996. Section 722, as amended, authorized the Department of the Army to expand its contracting opportunities for dredging by allowing the participation of small businesses and emerging small businesses.

The 1995 goal was that at least 20 percent of the dollar value of contracts for dredging be awarded to small businesses, including 5 percent of the dollar value of contracts to be reserved for emerging small businesses. Excluded from the percentage calculation requirements were dustpan and seagoing hopper dredges (large dredges not normally owned by small businesses). In addition, procurements valued at \$400,000 or less were reserved for emerging small businesses providing dredging services.

The Dredging Contractors of America, a national trade association for the U.S. dredging industry, prepared a report for FY 1995 that showed the prime contracts awarded for dredging services by the Army Corps of Engineers. The report shows that the Corps awarded prime contracts for dredging services (excluding dustpan and seagoing hopper dredges) that totaled \$351,282,830, of which the Corps awarded \$101,171,501 (28.8 percent) to small business. Of

the 28.8 percent awarded to small business, the Army awarded \$57,868,983, or 16.5 percent, to emerging small businesses and \$5,841,558, or 1.7 percent, to Section 8(a) contractors.

Audit Objectives

The primary audit objective was to determine whether the Army Corps of Engineers awarded contracts for dredging services to Section 8(a) program participants at fair market prices. The audit also determined whether Section 8(a) contractors performed the percentage of the work required by Federal regulations. We also evaluated the management control programs at the principal locations as they related to the audit objectives. See Appendix A for a discussion of the audit scope and methodology and for the results of the review of the management control program. See Appendix B for a summary of prior coverage related to the audit objectives.

Sole-Source Section 8(a) Dredging Contracts

Although the Norfolk and Buffalo Districts followed Federal Acquisition Regulations to support fair market prices on dredging contracts, the Districts negotiated three sole-source Section 8(a) contracts that were 9.9 percent, 1.8 percent, and 23.8 percent above the Government estimate. However, for FYs 1994 through 1996, the Districts awarded sealed bid competitive contracts that averaged 21.7 and 10 percent below the Government estimate, respectively. The Districts negotiated contracts above the Government estimate because the Districts negotiated sole-source contracts with the Section 8(a) contractors rather than competing the dredging requirements. As a result, the Districts paid a premium of about 26.7 percent, or \$1,280,186, above a competitive price on negotiated sole-source dredging services contracts awarded to Section 8(a) contractors.

Guidance on Fair Market Price for Section 8(a) Procurements

The Federal Acquisition Regulation (FAR) 19.001, "Definitions," defines "fair market price" as a price based on reasonable costs under normal competitive conditions and not on lowest possible cost.

FAR 19.806, "Pricing the 8(a) Contract," states:

- a) The contracting officer shall price the 8(a) contract in accordance with Subpart 15.8. If required by Subpart 15.8, the SBA [Small Business Administration] shall obtain certified cost or pricing data from the 8(a) contractor. If the SBA requests audit assistance to determine the reasonableness of the proposed price in a sole source acquisition, the contracting activity shall furnish it to the extent it is available.
- b) An 8(a) contract, sole source or competitive, may not be awarded if the price of the contract results in a cost to the contracting agency which exceeds a fair market price.
- c) If requested by the SBA, the contracting officer shall make available the data used to estimate the fair market price.
- d) The negotiated contract price and the estimated fair market price are subject to the concurrence of the SBA. In the event of a disagreement between the contracting officer and the SBA, the SBA may appeal in accordance with 19.810.

FAR 19.807, "Estimating fair market price," states:

- a) The contracting officer shall estimate the fair market price of the work to be performed by the 8(a) contractor.

b) In estimating the fair market price for an acquisition other than those covered in paragraph (c) of this section, the contracting officer shall use cost or price analysis and consider commercial prices for similar products and services, available in-house cost estimates, data (including cost or pricing data) submitted by the SBA or the 8(a) contractor, and data obtained from any other Government agency.

c) In estimating a fair market price for a repeat purchase, the contracting officer shall consider recent award prices for the same items or work if there is comparability in quantities, conditions, terms, and performance times. The estimated price should be adjusted to reflect differences in specifications, plans, transportation costs, packaging and packing costs, and other circumstances. Price indices may be used as guides to determine the changes in labor and material costs. Comparison of commercial prices for similar items may also be used.

Sole-Source and Competitive Dredging Procurements

Government Estimates for Sole-Source Dredging Procurements. The three negotiated, sole-source Section 8(a) dredging contracts were 9.9 percent, 1.8 percent, and 23.8 percent higher than the Government estimate.

Table 1 shows that the negotiated sole-source contract amounts for Section 8(a) dredging procurements were higher than the Government estimates.

Table 1. Difference Between the Government Estimate and Negotiated Amount for Section 8(a) Dredging Contracts				
<u>Contract Number</u>	<u>Government Estimate</u>	<u>Contract Amount</u>	<u>Difference</u>	<u>Percent</u>
Norfolk District				
DACW65-93-C-0189	\$2,053,132	\$2,256,893	\$203,761	9.9
DACW65-95-C-0106	1,472,800	1,500,527	27,727	1.8
Buffalo District				
DACW49-95-C-0013	<u>839,250</u>	<u>1,038,896</u>	<u>199,646</u>	23.8
Total	\$4,365,182	\$4,796,316	\$431,134	10.0

In addition, the Government estimate was tailored to the Section 8(a) contractors' size and available dredging equipment and not based on the most efficient dredging equipment available in the commercial marketplace. The Government estimate was originally developed from past procurements within the same area using dredge type and size most beneficial to the type of material

Sole-Source Section 8(a) Dredging Contracts

being dredged. The Districts adjusted their Government estimate by the dredge size and type actually available from the Section 8(a) contractor, this is in accordance with FAR. For example, the original Government estimate that the Buffalo District developed for the sole-source Section 8(a) procurement was based on the most capable dredging equipment (\$839,250); however, after receiving the contractors' proposal (\$1,685,528) that was 102 percent higher than the Government estimate, the Buffalo District revised the estimate. The Buffalo District adjusted the Government estimate upward to \$1,094,104, based on the Section 8(a) contractors' available dredge rather than the dredge size capable of performing the work efficiently and economically. The contract was then awarded for \$1,038,896, 5 percent below the revised Government estimate but 24 percent higher than the original estimate.

Government Estimates for Competitive Dredging Procurements. For competitive dredging contracts, the Districts did an excellent job competing dredging contracts. The contract awards averaged 21.7 percent and 10 percent below the Government estimate, respectively. In addition, the Government based its estimate on historical dredging data of the cubic yards to be dredged and the most effective available dredge size.

Table 2 summarizes the benefits that the districts received from competing dredging requirements. See Appendix D for details of the Districts' dredging services contracts.

Table 2. Summary of Norfolk and Buffalo Districts Competitive Dredging Contracts

<u>Competitive Contracts</u>	<u>Government Estimate</u>	<u>Contract Amount</u>	<u>Difference</u>	<u>Percent</u>
Norfolk District				
FY 1994	\$ 7,453,306	\$ 6,435,260	(\$1,018,046)	(13.7)
FY 1995	6,591,491	5,035,003	(1,556,488)	(23.6)
FY 1996	<u>8,965,731</u>	<u>6,554,795</u>	<u>(2,410,936)</u>	<u>(26.8)</u>
Total Norfolk District	\$23,010,528	\$18,025,058	(\$ 4,985,470)	(21.7)
Buffalo District				
FY 1994	\$ 4,582,570	\$ 4,080,290	(\$ 502,280)	(11.0)
FY 1995	5,519,612	5,173,200	(346,412)	(6.2)
FY 1996	<u>4,242,550</u>	<u>3,650,000</u>	<u>(592,550)</u>	<u>(13.9)</u>
Total Buffalo District	\$14,344,732	\$12,903,490	(\$1,441,242)	(10.0)

Both small business and Section 8(a) contractors had competed with large business under full and open competition dredging solicitations and had been successful. For example, in FY 1996, the Section 8(a) contractor at the Buffalo District competed and won three dredging contracts other than the sole-source Section 8(a) contract that it received. One contract was a full and open competition and two contracts were competitive emerging small business set-aside procurements. For the three competitive contracts that the Section 8(a) contractor was awarded, the sealed bids were 23.6 percent, 35.6 percent, and 0.3 percent below the Government estimates.

Section 8(a) Contract Awards

Section 8(a) Dredging Contracts. Although the Districts followed FAR to support fair market prices, they negotiated contracts above the Government estimate because the Districts negotiated sole-source contracts with the Section 8(a) contractors rather than competing the dredging requirements. The Districts performed cost analyses that addressed the Section 8(a) contractors' size and available dredging equipment in determining fair market prices.

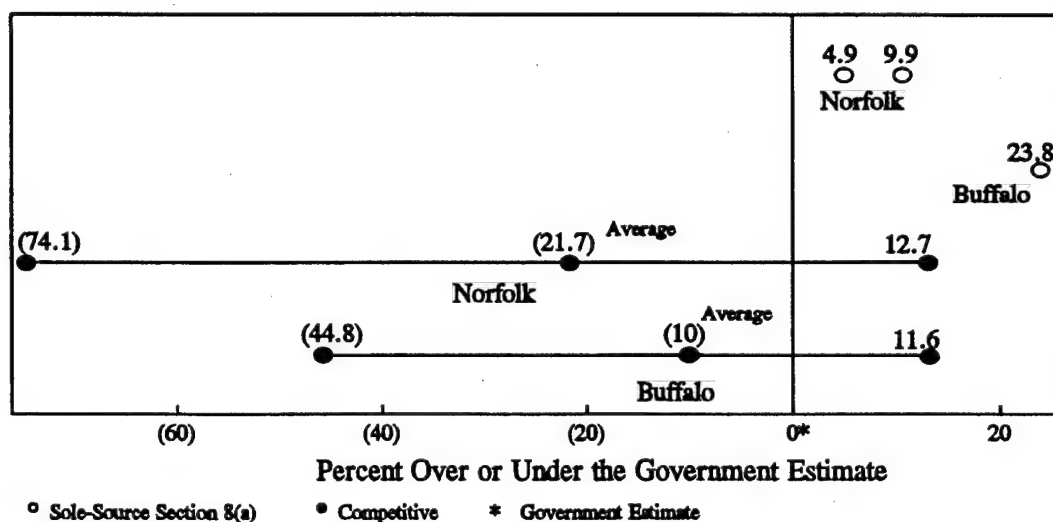
From FY 1993 through the first half of FY 1996, the Districts awarded three sole-source Section 8(a) dredging contracts, totaling \$4.8 million (Table 1). The Norfolk District awarded one contract in FY 1993 and another in FY 1995 to the same Section 8(a) contractor. However, that dredging contractor did not own the assets necessary to perform the dredging services and, therefore, leased the assets to fulfill the dredging requirements. Federal regulations do not require the contractor to perform the work with its own assets. The FAR states that a small dredging contractor identified as standard industrial code 1629, "Dredging and Surface Cleanup Activities," must dredge at least 40 percent of the yardage with its own equipment or equipment owned by another small dredging business. The Section 8(a) contractor leased the assets from a small business. The Buffalo District awarded one Section 8(a) contract in FY 1995. The districts awarded all three contracts through the Small Business Administration Section 8(a) Program as sole-source negotiated fixed-price contracts.

Dredging Contracts Set-Aside for the Section 8(a) Program. Acquisition regulations require a review of procurements to determine whether the requirements could be satisfied by small businesses. Each year the districts review their dredging projects for the upcoming fiscal year to determine which dredging procurements will be based on full and open competition, on set-aside for small or emerging businesses, and on set-aside for Section 8(a) program participants. The districts desired to establish Section 8(a) participation in their dredging procurements, but only two Section 8(a) contractors were available to perform dredging requirements, one in each district.

Lowest Acceptable Prices for Dredging Contracts

Range of Sole-Source and Competitive Dredging Costs. The Districts did not receive the lowest acceptable prices on three negotiated sole-source dredging contracts awarded to Section 8(a) contractors. For FYs 1994, 1995, and 1996, competitive dredging procurements at the Norfolk District ranged from 74.1 percent below the Government estimate to 12.7 percent above the Government estimate and averaged 21.7 percent below the Government estimate. Competitive dredging procurements at the Buffalo District ranged from 44.8 percent below the Government estimate to 11.6 percent above the Government estimate and averaged 10 percent below the Government estimate. The three negotiated sole-source Section 8(a) procurements at the Districts were 1.8 percent, 9.9 percent, and 23.8 percent above the Government estimate.

The following figure shows that the negotiated sole-source Section 8(a) dredging contracts were priced above the Government estimate while competitive dredging contracts were generally priced below the Government estimate.



Comparison of Percents Below or Above the Government Estimate for Sole-Source Section 8(a) and Competitive Dredging Contracts

Premium Prices for Sole-Source Section 8(a) Contracts for Dredging Services. The Districts paid a premium of about 26.7 percent, or \$1,280,186, above the average competitive price for negotiated dredging services contracts awarded to Section 8(a) contractors on a sole-source basis.

Sole-Source Section 8(a) Dredging Contracts

Table 3 shows the calculation of the cost benefits resulting from competitive versus negotiated sole-source Section 8(a) dredging contracts. We applied the average percent difference for each of the two Districts to the Government estimate developed for the sole-source Section 8(a) contracts. We then subtracted that calculated amount from the Government estimate to obtain a calculated competitive contract amount. We then subtracted the calculated competitive contract amount from the actual sole-source contract amount to calculate the difference.

Table 3. Calculation of Difference From Competing Dredging Contracts Instead of Negotiating Sole-Source Section 8(a) Contracts

	Norfolk District Contract Numbers (DACW65)		Buffalo District Contract Number (DACW49)	Total
	93-C-0189	95-C-0106	95-C-0013	
Sole-source contract amount	\$2,256,893	\$1,500,527	\$1,038,896	\$4,796,316
Government estimate	2,053,132	1,472,800	839,250	4,365,182
Less: average percent difference on competitive contracts*	(445,530)	(319,598)	(83,925)	(849,052)
Calculated competitive contract amount	1,607,602	1,153,202	755,325	3,516,130
Calculated difference because of competition	\$ 649,291	\$ 347,325	\$ 283,571	\$1,280,186
Percent difference	-28.8	-23.1	-27.3	-26.7

*The average percent difference on the Government estimated cost for competitive contracts awarded in the Norfolk and Buffalo Districts for the FYs 1994 through 1996 was -21.7 and -10.0 percent, respectively.

Because the Districts have been so successful in competing dredging requirements, the Districts should consider the cost benefits from competition when determining the reasonable costs under normal competitive conditions for dredging procurements set-aside for the Section 8(a) program and not award the contracts if the price exceeds the fair market price.

Managements Comments on the Finding and Audit Response

Managements Comments on the Audit Methodology. Management stated that the audit methodology used was flawed in that a cost or price analysis was not performed on the 8(a) contracts to determine whether awards were made at fair market prices. Comparing sealed bid contracts to negotiated contracts wrongly assumes that a correlation exists between the two. See Part III for the full text of managements comments.

Audit Response. We disagree with management's statement that the audit methodology was flawed by not performing a cost or price analysis in determining whether contracting officers made awards at fair market prices.

We did perform a form of price analysis when we compared the difference between the Government estimate and the negotiated sole-source Section 8(a) contract prices with the difference between the Government estimate and the competitive sealed bid contract prices for dredging services. The Districts relied primarily on cost analysis to support fair market prices, which did adequately support the costs for the specific Section 8(a) contractor as being fair and reasonable. However, the cost analysis by itself did not adequately address costs to perform the dredging services in the competitive marketplace.

Recommendation and Management Comments

We recommend that the Commanders of the Norfolk and Buffalo Districts, Army Corps of Engineers, consider the cost benefit from competition when determining the reasonable costs under normal competitive conditions for dredging procurements set-aside for the Section 8(a) program and not award the contracts if the price exceeds the fair market price.

Management Comments. The Army Corps of Engineers concurred with the recommendation and stated the Commanders of the Norfolk and Buffalo Districts, Army Corps of Engineers, will consider all options within statutory and regulatory constraints in awarding dredging procurements set-aside for the Section 8(a) program.

Part II - Additional Information

Appendix A. Scope and Methodology

Scope

Audit Scope. We reviewed sole-source Section 8(a), small business set-aside, and full and open competition dredging contracts for FY 1993 through the first half of FY 1996 at the Buffalo and Norfolk District offices of the U.S. Army Corps of Engineers.

Audit Period, Standards, and Locations. We performed this economy and efficiency audit from March through May 1996 in accordance with auditing standards issued by the Comptroller General of the United States, as implemented by the Inspector General, DoD. We included tests of management controls considered necessary. No statistical sampling procedures were used during the audit. Appendix F lists the organizations that we visited or contacted.

Methodology

Section 8(a) Dredging Contracts. We reviewed all three Section 8(a) dredging contracts awarded by the Norfolk and Buffalo Districts to determine whether the contracts were priced above a fair market price. We compared the original Government estimates to the contract prices resulting from competitive sealed bid contracts during FYs 1994 through the first half of FY 1996 to determine whether the Districts obtained fair and reasonable prices. We reviewed the two Section 8(a) dredging contracts awarded by the Norfolk District to determine whether the contractor was performing the contract requirements or subcontracting out the dredging services.

Use of Computer-Processed Data. We relied on computer-processed data generated by the DD350 system to compile a listing of all contracts awarded by the Districts offices from FY 1992 through the first half of FY 1996. Although we did not perform a formal reliability assessment of the computer-processed data, we determined that the contract numbers, contractors, and amounts agreed with the information in the computer-processed data.

Management Control Program

DoD Directive 5010.38, "Internal Management Control Program," April 14, 1987, requires DoD organizations to implement a comprehensive system of management controls that provides reasonable assurance that programs are operating as intended and to evaluate the adequacy of the controls.

Scope of Review of Management Control Program. We reviewed the adequacy of the management control procedures over contract awarding at the Districts. Specifically, we reviewed the development of Government estimates and the awarding of contracts.

Adequacy of Management Controls. The Districts management controls were adequate in that we identified no material management control weaknesses.

Appendix B. Summary of Prior Audits and Other Reviews

Inspector General, DoD

Inspector General, DoD, Report No. 96-059, "Complaint to the Defense Hotline on Sole-Source Section 8(a) Contracts at the Naval Air Systems Command," January 16, 1996, states that Naval Air Systems Command (NAVAIR) contracting officers were not recommending competition for Section 8(a) contracts with anticipated award prices greater than \$3 million. NAVAIR also had not fully implemented its management control program.

The report recommended that the Commander, NAVAIR, require contracting officers and the small business representative to base competition decisions for Section 8(a) procurements on an anticipated contract award price of 95 percent of the maximum contract amount when determining whether the anticipated award price was greater than \$3 million.

NAVAIR concurred with the intent of the recommendation to require contracting officers and the small business representative to recommend competition for Section 8(a) contracts with anticipated award prices greater than \$3 million and to fully implement a management control program. NAVAIR nonconcurred with the recommendation to base Section 8(a) competitive threshold decisions on a percentage of the maximum contract amount determined by historic contract funding levels. NAVAIR stated that it uses 100 percent of the "good faith estimate of the total value" to determine the anticipated contract award price. NAVAIR also nonconcurred with the potential monetary benefits, stating that the amended guidance from the Small Business Administration was in effect before the draft audit report was received and that NAVAIR was in compliance with the guidance. During mediation, NAVAIR provided an acceptable definition of "good faith estimate of the total value."

Army Audit Agency

Army Audit Agency Report No. SR 95-745, "Dredging Operations Industry Bidding Practices," September 12, 1995, states that the Headquarters Corps of Engineers and four of its districts had not established policies and procedures for detecting potential bidrigging (collusive bidding). In addition, the Army Audit Agency identified many bidrigging indicators, such as identical line item bids, limited competition, complementary bids, bid rotation, and low bidders subcontracting projects to high bidders. As a result, the dredging contractors may have violated the Sherman Antitrust Act and earned unwarranted profits on the dredging contracts. The report recommended requiring the Corps of Engineers to establish policies and implement procedures for detecting potential

Appendix B. Summary of Prior Audits and Other Reviews

bidrigging; require contracting personnel to identify subcontractors and forward that information to the dredging information system operator; and require the Corps to train all contracting personnel on bidrigging indicators. The Corps generally agreed with the report recommendations and agreed to take corrective action addressing bidrigging indicators.

Appendix C. Congressional Audit Request

Background. A congressional audit request was received from Representative Jan Meyers, Chairperson, Small Business Committee, in response to constituents' complaints. The complaints concerned the award of dredging contracts at the Army Corps of Engineers districts offices in Norfolk, Virginia, and Buffalo, New York.

Allegations. The first allegation was that the sole-source dredging contracts that the Norfolk and Buffalo District Corps of Engineers offices had awarded to Section 8(a) contractors were overpriced. The second allegation was that the Norfolk District office awarded a dredging contract to a Section 8(a) contractor who was not performing the work but was subcontracting out the tasks and acting solely as a broker.

Audit Results. The first allegation was substantiated. Although the Districts followed the FAR, they did not receive the best possible prices on sole-source dredging contracts awarded to Section 8(a) contractors. Historically, sealed bid competitive contracts have resulted in the Norfolk and Buffalo Districts contract awards at approximately 21.7 and 10.0 percent below the Government estimate. See the finding in Part I for details on sole-source section 8(a) dredging contracts.

The second allegation was partially substantiated. We determined that the Norfolk district Section 8(a) contractor neither owned the dredge assets to perform the dredging services nor permanently maintained dredging personnel. The contractor did not subcontract out the dredging services, but leased the dredge assets from a small business and hired dredging personnel to perform the dredging services as proposed. The FAR permits a contractor to use that method. The FAR states that a small dredging contractor identified as standard industrial code 1629, "Dredging and Surface Cleanup Activities," must dredge at least 40 percent of the yardage with its own equipment or equipment owned by another small dredging business.

Appendix D. Norfolk and Buffalo Districts FY 1994 Through FY 1996 Competitive Dredging Contracts

Table D-1. Norfolk Competitive Dredging Contracts

<u>Contract Number DACW65</u>	<u>Government Estimate</u>	<u>Contract Price</u>	<u>Difference</u>	<u>Percent Difference</u>	<u>Number of Offers</u>	<u>Business Type*</u>
FY 1994						
94-C-0010	\$ 674,991	\$ 761,000	\$ 86,009	12.7	2	E
94-C-0052	370,881	384,000	13,119	3.5	2	E
94-C-0021	379,508	214,000	(165,508)	(43.6)	2	E
94-C-0066	1,101,300	1,093,900	(7,400)	(0.7)	2	S
94-C-0055	641,313	327,000	(314,313)	(49.0)	2	L
94-C-0063	667,438	594,000	(73,438)	(11.0)	2	E
94-C-0038	522,580	572,460	49,880	9.5	5	E
94-C-0105	2,180,820	1,839,900	(340,920)	(15.6)	5	L
94-C-0103	639,365	425,000	(214,365)	(33.5)	3	S
94-C-0104	275,110	224,000	(51,110)	(18.6)	2	L
Subtotal	\$7,453,306	\$6,435,260	(\$1,018,046)	(13.7)		
FY 1995						
95-C-0046	\$ 312,347	\$ 95,663	(\$ 216,684)	(69.4)	6	E
95-C-0038	796,300	572,460	(223,840)	(28.1)	4	L
95-C-0043	1,745,885	1,575,000	(170,885)	(9.8)	2	L
95-C-0055	363,256	221,480	(141,776)	(39.0)	2	E
95-C-0060	672,061	500,000	(172,061)	(25.6)	2	S
95-C-0061	622,023	716,400	94,377	15.2	2	L
95-C-0058	695,619	638,000	(57,619)	(8.3)	2	E
95-C-0104	320,000	192,000	(128,000)	(40.0)	2	L
95-C-0032	1,064,000	524,000	(540,000)	(50.8)	5	E
Subtotal	\$6,591,491	\$5,035,003	(\$1,556,488)	(23.6)		

*E = Emerging small business, S = Small business, L = Large business.

**Appendix D. Norfolk and Buffalo Districts FY 1994 Through FY 1996
Competitive Dredging Contracts**

Table D-1. Norfolk Competitive Dredging Contracts (cont'd)

<u>Contract Number DACW65</u>	<u>Government Estimate</u>	<u>Contract Price</u>	<u>Difference</u>	<u>Percent Difference</u>	<u>Number of Offers</u>	<u>Business Type*</u>
FY 1996						
96-C-0034	\$ 2,183,250	\$2,266,250	\$ 83,000	3.8	4	L
96-C-0021	423,300	337,000	(86,300)	(20.4)	3	E
96-C-0019	584,300	474,221	(110,079)	(18.8)	2	E
96-C-0021	1,216,000	935,977	(280,023)	(23.0)	4	L
96-C-0024	507,740	385,120	(122,620)	(24.2)	3	E
96-C-0029	462,500	191,997	(270,503)	(58.5)	5	E
96-C-0017	1,597,600	525,630	(1,071,970)	(67.1)	2	L
96-C-0027	401,200	274,000	(127,200)	(31.7)	2	E
96-C-0036	704,480	520,000	(184,480)	(26.2)	2	E
96-C-0039	634,281	579,600	(54,681)	(8.6)	2	L
96-C-0043	251,080	65,000	(186,080)	(74.1)	10	E
Subtotal	\$ 8,965,731	\$ 6,554,795	(\$2,410,936)	(26.9)		
Total	\$23,010,528	\$18,025,058	(\$4,985,470)	(21.7)		

*E = Emerging small business, L = Large business.

**Appendix D. Norfolk and Buffalo Districts FY 1994 Through FY 1996
Competitive Dredging Contracts**

Table D-2. Buffalo Competitive Dredging Contracts

<u>Contract Number DACW49</u>	<u>Government Estimate</u>	<u>Contract Price</u>	<u>Difference</u>	<u>Percent Difference</u>	<u>Number of Offers</u>	<u>Business Type¹</u>
FY 1994						
94-C-0009	\$ 579,000	\$ 498,290	(\$ 80,710)	(13.9)	4	S
94-C-0020	665,000	703,000	38,000	5.7	2	S
94-C-0008	840,164	564,000	(276,164)	(32.9)	5	E
94-C-0024	179,000	198,400	19,400	10.8	4	E
94-C-0007	716,000	582,600	(133,400)	(18.6)	2	S
94-C-0006	<u>1,603,406</u>	<u>1,534,000</u>	<u>(69,406)</u>	(4.3)	2	L
Subtotal	\$ 4,582,570	\$4,080,290	(\$ 502,280)	(11.0)		
FY 1995						
95-C-0016	\$ 280,232	\$ 154,700	(\$ 125,532)	(44.8)	2	E
95-C-0011	966,000	962,000	(4,000)	(0.4)	3	E
95-C-0007	685,250	725,000	39,750	5.8	4	S
95-C-0009	466,000	520,000	54,000	11.6	2	E
95-C-0012	1,711,000	1,344,000	(367,000)	(21.4)	2	E
95-C-0006	<u>1,411,130</u>	<u>1,467,500</u>	<u>56,370</u>	3.9	3	L
Subtotal	\$ 5,519,612	\$ 5,173,200	(\$ 346,412)	(6.2)		
FY 1996						
	\$ 478,000 ^{2,3}	\$ 365,000	(\$ 113,000)	(23.6)	3	E
96-C-0012	267,800 ³	172,500	(95,300)	(35.6)	4	E
96-C-0009	1,438,750 ³	1,434,500	(4,250)	(0.3)	3	E
96-C-0011	1,395,000	1,180,000	(215,000)	(15.4)	4	E
96-C-0013	<u>663,000</u>	<u>498,000</u>	<u>(165,000)</u>	(21.8)	4	E
Subtotal	\$ 4,242,550	\$ 3,650,000	(\$ 592,550)	(13.9)		
Total	\$14,344,732	\$12,903,490	(\$1,441,242)	(10.0)		

¹E = Emerging small business, S = Small business, L = Large business.

²Protested. No Award to Date.

³Awarded to Section 8(a) contractor. Not competing as Section 8(a) contractor.

Appendix E. Organizations Visited or Contacted

Department of the Army

Auditor General, Department of the Army, Alexandria, VA
Army Corps of Engineers, Washington, DC
North Atlantic Division, New York, NY
Norfolk District, Norfolk, VA
North Central Division, Chicago, IL
Buffalo District, Buffalo, NY

Appendix F. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense (Comptroller)
Deputy Chief Financial Officer
Deputy Comptroller (Program/Budget)
Director, Defense Procurement
Director, Small and Disadvantaged Business Utilization
Assistant to the Secretary of Defense (Public Affairs)
Director, Defense Logistics Studies Information Exchange

Department of the Army

Auditor General, Department of the Army
Commander, Army Corps of Engineers
Commander, North Atlantic Division
Commander, Norfolk District
Commander, North Central Division
Commander, Buffalo District

Department of the Navy

Assistant Secretary of the Navy (Financial Management and Comptroller)
Auditor General, Department of the Navy

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
Auditor General, Department of the Air Force

Other Defense Organizations

Director, Defense Contract Audit Agency
Director, Defense Logistics Agency
Director, National Security Agency
Inspector General, National Security Agency
Inspector General, Defense Intelligence Agency

Non-Defense Federal Organizations and Individuals

Office of Management and Budget
Technical Information Center, National Security and International Affairs Division,
General Accounting Office
Office of Federal Procurement Policy
Small Business Administration

Chairman and ranking minority member of each of the following congressional committees and subcommittees:

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on National Security, Committee on Appropriations
House Committee on Government Reform and Oversight
House Subcommittee on National Security, International Affairs, and Criminal
Justice, Committee on Government Reform and Oversight
House Committee on National Security

Honorable Jan Meyers, U.S. House of Representatives

Part III - Management Comments

Army Corps of Engineers Comments



DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

04 SEP 1996

CEAO (36-2b)

MEMORANDUM THRU ~~Director of the Army Staff~~ ⁵¹⁹
Secretary of the Army Research Development and
Acquisition *Ken Owen 10 Sep*

FOR The Inspector General, Department of Defense

SUBJECT: Audit of USACE Sole-Source Section 8(a) Contracts for
Dredging Services, Project No. 6CF-5031 -- RESPONSE

Enclosed is the official HQUSACE command response to subject
draft audit report.

FOR THE COMMANDER:

Enc1

John E. Templeton
JOHN E. TEMPLETON
Chief, Audit Office



DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CEAO (36b)

15 AUG 1996

MEMORANDUM FOR THE AUDITOR GENERAL, U.S. Army Audit Agency

SUBJECT: DODIG Audit of USACE Sole-Source Section 8(a) Contracts
for Dredging Services -- RESPONSE

Attached is the official command response to the draft report on
subject audit.

FOR THE COMMANDER:

A handwritten signature in cursive script, reading "Robert H. Griffin", is positioned above the typed name.

ROBERT H. GRIFFIN
Colonel, Corps of Engineers
Chief of Staff

**USACE Section 8(a) Contracts for
Dredging Services
6CF-5031**

RECOMMENDATION 1: We recommend that the Commanders of the Norfolk and Buffalo Districts, Army Corps of Engineers, consider the cost benefit from competition when determining the reasonable costs under normal competitive conditions for dredging procurements set-aside for the Section 8(a) program and not award the contracts if the price exceeds the fair market price.

ADDITIONAL FACTS: The methodology used was seriously flawed in that the audit team failed to perform cost or price analysis on the 8(a) contracts to determine whether awards were made at fair market prices. Rather, the auditors statistically compared sealed bid contracts to negotiated contracts and wrongly assumed there is a correlation. Comparing different types of contracts from different procurements is literally comparing apples to oranges. Failing to address how the contracting officer determined contract price makes the report's conclusion questionable.

CONCUR. The Commanders of the Norfolk and Buffalo Districts, Army Corps of Engineers, will consider all options within statutory and regulatory constraints in awarding dredging procurements set-aside for the Section 8(a) program.

Audit Team Members

This report was prepared by the Management Contract Directorate, Office of the Assistant Inspector General for Auditing, DoD.

Paul J. Granetto
Terry L. McKinney
Henry F. Kleinknecht
David P. Cole
Kathryn M. Hoffman
Ana M. Myrie

INTERNET DOCUMENT INFORMATION FORM

A . Report Title: Army Corps of Engineers Sole-Source Section (8a)
Contracts for Dredging Services

B. DATE Report Downloaded From the Internet: 11/22/99

**C. Report's Point of Contact: (Name, Organization, Address, Office
Symbol, & Ph #):** OAIG-AUD (ATTN: AFTS Audit Suggestions)
Inspector General, Department of Defense
400 Army Navy Drive (Room 801)
Arlington, VA 22202-2884

D. Currently Applicable Classification Level: Unclassified

E. Distribution Statement A: Approved for Public Release

F. The foregoing information was compiled and provided by:
DTIC-OCA, Initials: __VM__ **Preparation Date** 11/22/99

The foregoing information should exactly correspond to the Title, Report Number, and the Date on the accompanying report document. If there are mismatches, or other questions, contact the above OCA Representative for resolution.